

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NCS MULTISTAGE INC.,
NCS MULTISTAGE, LLC,

Plaintiffs,

vs.

NINE ENERGY SERVICE, INC.,

Defendant.

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CIVIL ACTION NO. 6:20-cv-00277-ADA

**STIPULATION OF DISMISSAL OF CERTAIN CLAIMS
PURSUANT TO RULE 41(a)(1)(A)(ii)**

Pursuant to Rule 41(a)(1)(A)(ii), Plaintiffs NCS Multistage Inc. (“NCS Canada”) and NCS Multistage, LLC (“NCS US,” and collectively, “NCS”) and Defendant Nine Energy Service, Inc. (“Nine,” and collectively, “the Parties”) hereby file this Stipulation of Dismissal of Certain Claims. In support thereof, the Parties state as follows:

1. On April 8, 2020, NCS Canada filed an Original Complaint for Patent Infringement against Nine, accusing Nine of infringing U.S. Patent No. 10,465,445 (“the ’445 Patent”). Dkt. 1. In the Original Complaint, NCS Canada alleged that Nine’s infringement has been and continues to be willful and deliberate and alleged it was entitled to enhanced damages because of Nine’s willful infringement. Dkt. 1 at 7.

2. On February 8, 2021, NCS US was added to the case in NCS’s First Amended Complaint for Patent Infringement. Dkt. 58. In the First Amended Complaint, NCS re-alleged that Nine’s infringement of the ’445 Patent has been and continues to be willful and deliberate and re-alleged that it was entitled to enhanced damages because of Nine’s willful infringement. Dkt. 58 at 7.

3. On October 8, 2021, Nine filed a Motion for Summary Judgment of No Willful

Infringement and No Conduct Warranting Enhanced Damages (“SJM”). Dkt. 114.

4. To simplify the case, NCS notified Nine it was voluntarily dismissing with prejudice its claims for willfulness and enhanced damages and asked Nine to withdraw its SJM. Nine agreed.

5. The Parties have therefore agreed and stipulated to the dismissal of NCS’s claims for willfulness and enhanced damages with prejudice.

6. This Stipulation of Dismissal of Certain Claims will not affect or prejudice NCS’s other claims against Nine, which remain pending before this Court. *See, e.g., Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980) (noting that Rule 41(a)(1) authorizes dismissing single claims in a multicclaim lawsuit); *Wesson v. City of Dallas*, No. 3:14-CV-4325-L, 2016 WL 892780, at *1 (N.D. Tex. Mar. 9, 2016) (approving of the parties’ stipulation to dismiss only one of the plaintiff’s claims pursuant to Rule 41(a)(1)(ii)); *cf. Meinecke v. H & R Block of Houston*, 66 F.3d 77, 82, (5th Cir.1995) (finding district court’s order granting summary judgment on claims previously dismissed pursuant to Rule 41(a)(1)(ii) stipulation was “void” and affirming granting of summary judgment on non-dismissed claims).

WHEREFORE, the Parties respectfully notify the Court of this Stipulation of Dismissal of Certain Claims and stipulate that NCS’s claims for willfulness and enhanced damages are dismissed with prejudice.

Dated: October 14, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record were electronically served with a copy of the foregoing on October 14, 2021, via the Court's CM/ECF system.

/s/ Domingo M. LLagostera

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